

EXHIBIT 2
DATE 1/18/13
VS 82

AN ACT CLARIFYING WORKERS' COMENSATION EXTRATERRITORIAL APPLICABILITY AND RECIPROCITY; REQUIRING SPECIFIC REFERENCE FOR EXTRATERRITORIAL COVERAGE TO APPLY TO THE CONSTRUCTION INDUSTRY; EXTENDING RULEMAKING AUTHORITY

REPRESENTATIVE SCOTT REICHNER

HOUSE BUSINESS AND LABOR COMMITTEE

JANUARY 18, 2013

Mr. Chairman, members of the committee, I am Scott Reichner, representative from District 9 in Big Fork. I am here before you today to present a bill requested by the Department of Labor and Industry.

HB82 makes revisions to Section 39-71-402, MCA – Extraterritorial applicability and reciprocity agreements with other states.

Current law provides that Montana employers may take their Montana workers' compensation insurance coverage into other states to work temporarily.

Current law also provides that, except in the construction industry, another state's employer may bring their state's workers' compensation coverage into Montana to work temporarily.

A written agreement between Montana and the other state is not required to give effect to these provisions.

Further, under current law, the state of Montana may enter into reciprocity agreements with other states to allow recognition of an employer's workers' compensation coverage. An employer can then use its coverage in one state to apply to work in both states.

These agreements currently apply for no more than one year. Employers receive a certificate from the Department showing that their coverage applies in both states.

Since each state's workers' compensation law is different, there are situations that arise between states that result in the need for these written agreements to clarify details of how the extraterritorial coverage and reciprocity will be interpreted between the states.

Montana currently has such agreements with North Dakota, Wyoming, Idaho, Washington, Oregon, Utah, Nevada, and South Dakota. These agreements specify such details as how "temporarily" is defined and how the states will certify that the appropriate workers' compensation coverage exists so it can be recognized by the other state.

However, Montana is one of very few states that require every employer engaged in the construction industry to be covered by a Montana policy; even for employers from other states working temporarily in Montana. This mandatory coverage for the construction industry has caused issues for Montana employers that work in another state temporarily and want Montana coverage recognized in that state. Most states ask why they should recognize Montana's coverage when Montana doesn't recognize their coverage in the construction industry. This requirement results in employers having policies in both states and paying premium on the same payroll in both states.

The Bakken oil fields in eastern Montana and western North Dakota have significantly increased the job growth in the border area and the overall economic activity between the two states. Montana based employers are increasingly conducting operations in North Dakota using Montana employees for longer periods of time. There is regular travel across the border. The extraterritorial agreement in place with North Dakota has been in place since 2007. This agreement excludes reciprocity for construction and limits recognition of the other state's workers' compensation coverage to 12 months.

This bill will:

- Allow Montana the flexibility to negotiate agreements with other states that meet an industry's needs;
- Allow waiver of Montana's mandatory construction industry coverage to achieve reciprocity between the states;
- Allow Montana employers to work in neighboring states temporarily without having to get coverage in both states on the same payroll; and
- Provide Montana workers' compensation benefits to Montana employees that are injured in other states while working for Montana employers.

Mr. Chairman, there are representatives of the Department here who will explain the details of the bill. I look forward to a good hearing, and I reserve the right to close.

HB82 SUMMARY

Presented by Diana Ferriter, Administrator
Employment Relations Division

Section 1. of the bill amends section 39-71-402. Extraterritorial applicability and reciprocity of coverage – agreements with other states – rulemaking.

(1)(a) Clarifies that in the absence of an Extraterritorial agreement, workers employed in Montana and covered under a Montana workers' compensation policy that are injured while temporarily working in another state incidental to the Montana employment, are covered under the Montana Workers' Compensation Act.

(1)(b) Clarifies that in the absence of an Extraterritorial agreement, workers employed in another state and covered under the other state's workers' compensation policy that work in Montana temporarily, incidental to the other state's employment, are covered under the other state's workers' compensation laws.

(1)(c) Clarifies that in the absence of an Extraterritorial agreement, employers from another state that are engaged in the construction industry and employ workers from another state are required to purchase Montana workers' compensation coverage while working in Montana.

Subsection (2) will make several changes to 39-71-402:

(2)(a) Allow the department, with the approval of the Governor, to enter into reciprocal agreements with other states. This is not a new provision of law but improved language from the current law. This provision is simply rewritten from the strike through language at the bottom of page 2. The current law subsection (4) was rewritten and moved here by the Legislative drafter.

(2)(b) Lists the provision that must be included in the agreement that each state will recognize the other state's exclusive remedy while workers are working incidental to their employment in the other state.

(2)(c) Lists the provisions that must be included in the agreement regarding how long the work may continue and whether other limitations or exclusions apply.

(2)(d) Allows Montana to waive its mandatory construction coverage requirement if the agreement specifically indicates the agreement applies to employers engaged in the construction industry.

(2)(e) Clarifies the agreement may be canceled, renewed, or modified as provided and documented in the agreement.

(2)(f) Provides a certification process for the states to notify each other that an employer engaged in work in the other state has proper workers' compensation coverage from the state providing the exclusive remedy.

(3) Provides rule making authority to the department.

Lines 28 through 30 on the bottom of page 2 delete the language that was rewritten and moved to lines 2 through 5 at the top of page 2. This is the language that authorizes the department, with the approval of the Governor, to enter into extraterritorial agreements with other states.

Lines 2 through 4 on page 3 of the bill delete the language requiring the Montana mandatory construction coverage for all out of state employers because the bill allows a waiver in (2)(d) of the mandatory coverage if agreed upon and documented in the Extraterritorial agreement. This deletion does not apply to out of state employers engaged in the construction industry from a state without an agreement that contains the waiver language.

New Section 2 provides the bill is effective on passage and approval.